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Decatur, IL 62526-3269  
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www.dynegy.com

February 25, 2005



Hon. Edward C. Hurley, Chairman  
Illinois Commerce Commission  
527 E. Capitol Avenue  
Springfield, Illinois 62701

Re: Commonwealth Edison Company's Tariff filing re CPP Supplier Forward Contracts  
anticipated to be made at the Illinois Commerce Commission on February 25, 2005

Dear Chairman Hurley:

Pursuant to conversations with Commonwealth Edison Company ("ComEd"), this is to confirm that Dynegy Inc. ("Dynegy") is in conceptual agreement with the credit and collateral provisions attached hereto as Attachment A. Assuming that above-referenced filing incorporated the provisions of Attachment A completely and without material change, then Dynegy agrees to support those credit and collateral provisions in the Illinois Commerce Commission ("ICC") proceeding to determine the propriety of ComEd's tariff filing ("ICC Case"). Notwithstanding the preceding sentences, Dynegy specifically reserves its rights (a) to challenge other aspects of ComEd's tariff filing, (b) to raise issues relating to the credit and collateral provisions in other fora or cases other than the ICC Case, including, but not limited to, proceedings relating to similar tariffs filed by companies other than ComEd and (c) to seek modifications to the credit and collateral provisions if any other party proposes inclusion of an Independent Credit Requirement in the ICC Case.

If you have any questions regarding this, please feel free to contact Mr. Huddleston at 713-507-6786 or me at 217-872-2336.

Sincerely,

Joseph L. Lakshmanan,  
Managing Director—Regulatory Affairs

Enc.

Hon. Edward C. Hurley  
February 25, 2005  
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cc (all w/ enc.):

Com. Lula M. Ford  
Com. Robert F. Lieberman  
Com. Erin M. O'Connell-Diaz  
Com. Kevin K. Wright  
Scott Wiseman, Executive Director  
Ms. Arlene A. Juracek, Exelon  
Mr. Barry N.P. Huddleston, Dynegy

## APPENDIX A

### CPP-A Supplier Forward Contract

#### DEFINITIONS

Mark-to-Market Exposure Amount means an amount calculated daily for the CPP-A Supplier reflecting the financial exposure to the Company due to fluctuations in market prices for Energy as set forth in Section 6.3 and in Appendix D, minus amounts due pursuant to this Agreement to the CPP-A Supplier for the delivery of CPP-A Supply. If the calculation of the Mark-to-Market Exposure Amount results in a negative number, the Mark-to-Market Exposure Amount shall be zero.

Settlement Amount means with respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4.a. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

Total Exposure Amount means an amount calculated daily for the CPP-A Supplier reflecting the total credit exposure to the Company and consisting of the sum of: (i) the Mark-to-Market Exposure Amount arising under this Agreement and any other agreement for CPP-A Supply or CPP-B Supply between the Company and the CPP-A Supplier; and (ii) the amount designated as the Credit Exposure under any CPP-H Supplier Forward Contract between the Company and the CPP-A Supplier; provided, however, that in the event the Total Exposure Amount calculated for any day is a negative number, the Total Exposure Amount shall be deemed to be zero for such day. Any previously posted collateral will be netted against the Total Exposure Amount when determining any new collateral requirements.

#### 5.4.b Net Out of Settlement Amounts

The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the CPP-A Supplier for the provision of CPP Supply into a single amount by: netting out (a) all Settlement Amounts that are due or will become due to the

Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the CPP-A Supplier for the provision of CPP Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting party under this Agreement or any other agreement(s) between the Company and the CPP-A Supplier for the provision of CPP Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the CPP-A Supplier is the Defaulting Party and the Termination Payment is due to the CPP-A Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the CPP-A Supplier, and further provided that any previously attached security interest of the Company in such retained amounts shall continue. Any portion of the Termination Payment not retained by the Company as security shall be immediately due and owing to the CPP-A Supplier as an estimate of the amounts ultimately determined to be due and owing.

The Parties recognize, however, the final calculation of Settlement Amounts hereunder may not be known for some time since the level of such Settlement Amounts may be dependant upon the arrangements made by the Company to obtain replacement services or a replacement supplier. The Company and the CPP-A Supplier agree that, until the calculation of Settlement Amounts under this provision is completed, the amount and payment to the Company of the Termination Payment shall be immediately due and owing as an estimate of the amounts ultimately determined to be due and owing. After Settlement Amounts have been finally determined under this Section 5.4, the amounts due and owing will be reconciled with payments already made by the CPP-A Supplier.

The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined to be due and owing by the CPP-A Supplier, and if, upon making a final determination of Settlement Amounts, the Termination Payment, or any portion thereof, is to be made to the CPP-A Supplier, the Company will pay simple (not compounded) interest on the retained portion of the Termination Payment to the CPP-A Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per annum.

## **ARTICLE 6. CREDITWORTHINESS**

### **6.1 Applicability**

The CPP-A Supplier agrees that it shall meet the creditworthiness standards of this Article 6 at all times during the Term and shall promptly notify the Company of any change in its credit rating or the credit rating of its Guarantor, shall promptly notify the Company if the CPP-A Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and shall also notify the company of any materially adverse change in its financial condition or in the financial condition of its Guarantor. Without limitation of the foregoing, the CPP-A Supplier shall, upon written request by the Company, affirmatively demonstrate its compliance with the creditworthiness standards set forth hereunder. The Company may establish less restrictive creditworthiness standards under this Article 6 in a non-discriminatory manner. The Company shall promptly notify the CPP-A Supplier in the event the Company is downgraded Below Investment Grade.

### **6.2 Creditworthiness Determination**

The CPP-A Supplier may submit and maintain a security deposit in accordance with Sections 6.3 and 6.7 in lieu of submitting to or being qualified under a creditworthiness evaluation. The CPP-A Supplier shall have the opportunity to petition the Company to re-evaluate its creditworthiness whenever an event occurs that the CPP-A Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no later than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the Credit Limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. The CPP-A Supplier shall provide unrestricted access to audited financial statements; provided, however, that if audited financial statements are not available, the Company may accept other types of financial statements. In the event that the CPP-A Supplier relies upon a Guarantor, the creditworthiness determination provided for by this section shall apply to the Guarantor.

### **6.3 Mark-to-Market Exposure Amount Methodology**

To calculate the daily exposure for the CPP-A Supplier, the Mark-to-Market Exposure Amount methodology will be used. The "Initial Mark" for each Billing Month will be determined at the time the Auction is completed based on the available On-Peak Forward Prices and, for the remaining Billing Months for which such prices are not available, will be derived using a proprietary method that reflects forward market

conditions. At the time the Auction is completed, the Mark-to-Market Exposure Amount for the CPP-A Supplier shall be equal to zero. Subsequently, the differences between the Initial Mark and the available On-Peak Forward Prices on the valuation date ("Mark") for the corresponding Billing Months will be used to calculate the daily exposures for the CPP-A Supplier. The total Mark-to-Market Exposure Amount will be equal to 1.1 times the sum of the MTM for each Billing Month, less amounts due the CPP-A Supplier for CPP-A Supply. The methodology for calculation of the Initial Mark, Mark and MTM is described in Appendix D.

#### **6.4 Credit Limit**

The following criteria constitute the Company's creditworthiness requirements for the CPP-A Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) will be used.

(i) The following requirements shall apply in the event that the CPP-A Supplier or its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the CPP-A Supplier cannot meet the following requirements, it shall be required to post cash or a Letter of Credit for the Total Exposure Amount.

(a) If the CPP-A Supplier chooses not to rely on a Guarantor to satisfy the requirements of this Section 6.4(i), the requirements of this subsection 6.4(i)(a) shall apply. For the CPP-A Supplier to be granted an unsecured line of credit, the CPP-A Supplier: (1) must be rated by at least two of the following rating agencies: S&P, Moody's, Fitch or A.M. Best, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) of at least "BBB-" from S&P, "Baa3" from Moody's, "BBB-" from Fitch, or "bbb" from A.M. Best (a "Minimum Rating"). If the CPP-A Supplier is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the CPP-A Supplier is rated by three or four rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined in accordance with Table A:

**Table A**

Credit Rating of the CPP-A Supplier or the Guarantor				Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below	
S&P	Moody's	Fitch	A.M. Best	%	Credit Limit Cap*
A- and above	A3 and above	A- and above	Aaa	16% of TNW	\$60,000,000
BBB+	Baa1	BBB+	Aa	10% of TNW	\$40,000,000
BBB	Baa2	BBB	A	8%	\$30,000,000
BBB-	Baa3	BBB-	Bbb	6%	\$15,000,000
Below BBB-	Below Baa3	Below BBB-	Below Bbb	0% of TNW	0

\*For CPP-A Suppliers relying on a Guarantor, the Credit Limit is also capped by the amount of the financial Guaranty.

The CPP-A Supplier will be granted a single Credit Limit to be applied to all CPP Supply agreements between the CPP-A Supplier and the Company. The CPP-A Supplier will be required to post cash or a Letter of Credit for the Margin due the Company as set forth in Section 6.5.

(b) If the CPP-A Supplier chooses to rely upon a Guarantor to satisfy the requirements of this Section 6.4(i) the requirements of this subsection 6.4(i)(b) shall apply. If the CPP-A Supplier has a Guarantor, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, Fitch or A.M. Best, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the Guarantor is rated by three or four rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount that could be provided through the financial Guaranty will be determined in accordance with Table A.

The CPP-A Supplier will be granted a Credit Limit equal to the lesser of: (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the Term or (ii) the Credit Limit applicable to the Guarantor's credit rating in accordance with Table A. The CPP-A Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable Credit Limit during the time period after the Company has made a Margin Call but before the CPP-A Supplier has posted the required Margin. Notwithstanding anything herein to contrary, the CPP-A Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the CPP-A Supplier may request a return of Margin in accordance with Section 6.5. The CPP-A Supplier will be required to post cash or a Letter of Credit for the Margin due the Company as set forth in Section 6.5.

(c) As an alternative to satisfying subsections 6.4(i)(a) or 6.4(i)(b), the CPP-A Supplier may post cash or a Letter of Credit for the entire Total Exposure Amount.

(ii) The following standards shall apply in the event that neither the CPP-A Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the CPP-A Supplier cannot meet the following requirements, the posting of cash or a Letter of Credit for the Total Exposure Amount will be required at the time of or prior to the execution of this Agreement.

(a) The CPP-A Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for CPP-A Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the CPP-A Supplier, to evaluate the evidence of creditworthiness submitted by the CPP-A Supplier; or

(b) The CPP-A Supplier's Guarantor shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for Guarantors of CPP-A Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the CPP-A Supplier, to evaluate the evidence of creditworthiness submitted by such Guarantor.



(iii) If neither the CPP-A Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States, the CPP-A Supplier or its Guarantor, in addition to all documentation required elsewhere in this Section 6.5, shall supply the following as a condition of being granted a Credit Limit.

(a) For the CPP-A Supplier: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in which the CPP-A Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the CPP-A Supplier in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of the CPP-A Supplier that the person executing the Agreement on behalf of the CPP-A Supplier has the authority to execute the Agreement and that the governing board of the CPP-A Supplier has approved the execution of the Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of the CPP-A Supplier that the CPP-A Supplier has been authorized by its governing board to enter into agreements of the same type as this Agreement. The Company shall have full discretion, without liability or recourse to the CPP-A Supplier, to evaluate the sufficiency of the documents submitted by the CPP-A Supplier.

(b) For the CPP-A Supplier's Guarantor: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in the which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as this Guaranty. The Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the CPP-A Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

## **6.5 Posting Margin and Return of Surplus Margin**

(i) If at any time during the Term, the Total Exposure Amount exceeds the CPP-A Supplier's Credit Limit, then the Company, on any Business Day, may request

that the CPP-A Supplier provide Margin in the form of cash or a Letter of Credit (a "Margin Call"). The Margin requirement will be rounded up to the nearest \$100,000.

(ii) If the CPP-A Supplier receives written notice for Margin from the Company by 1:00 p.m. EPT on a Business Day, then the CPP-A Supplier shall post Margin the next following Business Day if posting cash, and the second Business Day if posting a Letter of Credit; provided, however, that the Company may agree in writing to extend the period to provide Margin. If the CPP-A Supplier receives notice for Margin from the Company after 1:00 p.m. EPT on a Business Day, then the CPP-A Supplier must post Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide Margin. The Company will not unreasonably deny a request for a one-business day extension of such period. In the event that the CPP-A Supplier fails to provide Margin when due, then an Event of Default under Article 5 will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5.

(iii) Any cash or a Letter of Credit held by the Company in excess of the required Margin ("Surplus Margin"), as determined above, will be returned to the CPP-A Supplier upon receipt of a written request by the CPP-A Supplier. If the CPP-A Supplier posted cash and notice is received by 1:00 p.m. EPT on a Business Day, the Surplus Margin will be returned by the next following Business Day. If the CPP-A Supplier posted cash and notice is received by the Company after 1:00 p.m. EPT on a Business Day, the Surplus Margin shall be returned by the second Business Day following the date of notice. If the CPP-A Supplier posted a Letter of Credit to secure its Margin requirement, the Surplus Margin shall be returned on the next Business Day following the Business Day on which the CPP-A Supplier's written request for its return is received by the Company. The Company may satisfy its obligation to return Surplus Margin included in a Letter of Credit posted by the CPP-A Supplier by signing and transmitting by telecopy to the issuing bank a New Availability Certificate (as provided for in Annex 3 to the Letter of Credit) for the new Margin amount. In the event that the Company fails to satisfy its obligation to return the Surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 will be deemed to have occurred and the CPP-A Supplier will be entitled to the remedies set forth in Article 5 unless the CPP-A Supplier agrees in writing to extend such period for returning the surplus Margin. The CPP-A Supplier will not unreasonably deny a request for a one-business day extension of the period for returning the Surplus Margin.

## **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the CPP-A Supplier delivered Margin or collateral hereunder, the CPP-A Supplier hereby grants to

the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and in all amounts owed to the CPP-A Supplier by the Company under or in connection with any CPP Supply agreement. The CPP-A Supplier agrees to take such action as reasonably required to perfect in favor of the Company a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by the CPP-A Supplier, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the CPP-A Supplier in the possession of the Company whether held in connection with this Agreement or any other agreement(s) between the Company and the CPP-A Supplier for the provision of CPP Supply; (iii) draw on any outstanding letter of credit issued for the Company's benefit; and (iv) liquidate all security held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the CPP-A Supplier, including any equity or right of purchase or redemption by the CPP-A Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the CPP-A Supplier's obligation under this Agreement or any other agreement(s) between the Company and the CPP-A Supplier for the provision of CPP Supply (the CPP-A Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to the return of any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the CPP-A Supplier:

Notification information for each CPP-A Supplier is set forth on Appendix A hereto.

If to the Company to:

Commonwealth Edison Company

One Financial Place

440 S. LaSalle Street – Suite 3300

Chicago, Illinois

Attention: Vice President – Energy Acquisition

Facsimile No.: (312) 394-3759

Confirmation No.: (312) 394-2518

Copy to:

Commonwealth Edison Company

One Financial Place

440 S. LaSalle Street – Suite 3300

Chicago, Illinois

Attention: Vice President & Deputy General Counsel

Facsimile No.: (312) 394-5433

Confirmation No.: (312) 394-7541

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

## **6.6 Security Instruments**

At the CPP-A Supplier's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

- (i) Cash; or

(ii) An irrevocable transferable standby letter of credit acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) from S&P or Moody's (a "Letter of Credit"). (A standard format for the Letter of Credit is provided in Appendix E.) The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods unless the Company receives written notice from the issuing financial institution at least ninety (90) days, but not more than one hundred twenty (120) days, prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If the Company receives notice from the issuing financial institution that the Letter of Credit will not be extended, the CPP-A Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute Letter of Credit must be effective as of the expiration date and delivered to the Company at least thirty (30) days before the expiration date of the original Letter of Credit. If the CPP-A Supplier fails to supply a substitute Letter of Credit as required herein, then the Company will have the right to draw on the existing Letter of Credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which the CPP-A Supplier has obtained a Letter of Credit falls below levels specified in this Article 6, the CPP-A Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards unless such period is extended in writing by Company.

## **6.8 Maintenance of Creditworthiness**

### **6.8.a. Reporting of Changes**

The CPP-A Supplier shall promptly notify the Company of any change in its credit rating or the credit rating of its Guarantor, shall promptly notify the Company if the CPP-A Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and shall also notify the company of any materially adverse change in its financial condition or in the financial condition of its Guarantor. The CPP-A Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company. The Company shall promptly notify the CPP-A Supplier in the event the Company is downgraded Below Investment Grade.

### **6.8.b. Change in Credit Standing**

The Company will re-evaluate the creditworthiness of the CPP-A Supplier whenever it becomes aware, through the provision of notice by the CPP-A Supplier or otherwise, of a downgrade in the CPP-A Supplier's or Guarantor's credit rating. If the lowest credit rating (whether corporate issuer rating or unsecured senior debt rating) used to determine the CPP-A Supplier's Credit Limit is downgraded, the Company will immediately reassess the amount of the Credit Limit it will grant the CPP-A Supplier pursuant to Section 6.5, as well as the adequacy of the Margin and the collateral being provided by the CPP-A Supplier pursuant to Sections 6.6 and 6.8. If necessary, the Company will request and the CPP-A Supplier shall provide an additional Security Instrument to the Company (or increase the value of the existing Security Instrument) in accordance with Sections 6.5 and 6.7.

#### **6.9 Calling on Security**

The Company may call upon the Security Instrument posted by the CPP-A Supplier if the CPP-A Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the CPP-A Supplier for the provision of CPP Supply after all of the following events occur:

- (i) Written Notice of Default is provided to the CPP-A Supplier; and
- (ii) Any applicable cure period ends.

The foregoing notwithstanding, the Security Instrument posted by the CPP-A Supplier shall become due automatically, and may be called upon by the Company, without prior notice or right of cure in the case of any Event of Default arising under Section 5.1 (i), (ii), (iii), (iv), (v), (vi), (vii) (viii) and (ix).

#### **6.10 Interest on Cash Held by Company/Separate Account for Cash Collateral**

The Company will pay simple interest (not compounded) calculated at the lower of the Interest Index or six (6) percent per annum on all cash posted by the CPP-A Supplier and directly held by the Company pursuant to this Agreement. In the event that the Company's credit is downgraded Below Investment Grade, at the request of the CPP-A Supplier, the Company will transfer within 2 Business Days all cash collateral being held by it pursuant to this Agreement to a Qualified Institution. The Qualified Institution will hold the collateral in an interest-bearing account pending release of the funds pursuant to the terms of this Agreement. Interest will be allocated pro rata to the CPP-A Supplier.

Each Billing Month the Company will prepare a statement of interest amounts due to the CPP-A Supplier. The statement will be sent to the CPP-A Supplier within three (3) Business Days after the end of the Billing Month via overnight mail, facsimile or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

#### **6.11 Confidentiality**

Information supplied by the CPP-A Supplier in connection with the creditworthiness process shall be deemed confidential and not subject to public disclosure, unless Applicable Legal Authorities require disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The CPP-A Supplier will be given prompt notice of any request by a third party to obtain confidential information related to the CPP-A Supplier's creditworthiness.

#### **6.12 No Endorsement of CPP-A Supplier**

The Company's determination that the CPP-A Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the CPP-A Supplier. The Company will treat all CPP-A Suppliers in a non-discriminatory manner and shall provide no preference to any CPP-A Supplier.

#### **6.13 Multiple CPP Supply Agreements**

It is the intent of the Company and the CPP-A Supplier that, in the event the CPP-A Supplier is a party to other agreements with the Company for the provision of CPP Supply, the Company will calculate the Margin applicable to all such agreements as set forth herein.

### **9.1 The Company Payment of Obligations to the CPP-A Supplier**

The Company shall pay all amounts due to the CPP-A Supplier hereunder in accordance with the following provisions:

(iv) In the event that the Company's credit is downgraded Below Investment Grade, the Company will accelerate payments to the CPP-A Supplier in accordance with the following schedule:

(a) A Statement will be prepared on a bi-weekly basis;

(b) The Statement will be sent to the CPP-A Supplier within three (3) Business Days of the end of each bi-weekly period;

(c) The Company shall make payment on the first Business Day after the 9<sup>th</sup> calendar day after the end of each bi-weekly period.

Alternatively, the Company and the CPP-A supplier may mutually agree upon a schedule.



## CPP-B Supplier Forward Contract

### DEFINITIONS

Mark-to-Market Exposure Amount means an amount calculated daily for the CPP-B Supplier reflecting the financial exposure to the Company due to fluctuations in market prices for Energy as set forth in Section 6.3 and in Appendix D, minus amounts due pursuant to this Agreement to the CPP-B Supplier for the delivery of CPP-B Supply. If the calculation of the Mark-to-Market Exposure Amount results in a negative number, the Mark-to-Market Exposure Amount shall be zero.

Settlement Amount means with respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4.a. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

Total Exposure Amount means an amount calculated daily for the CPP-B Supplier reflecting the total credit exposure to the Company and consisting of the sum of: (i) the Mark-to-Market Exposure Amount arising under this Agreement and any other agreement for CPP-A Supply or CPP-B Supply between the Company and the CPP-B Supplier; and (ii) the amount designated as the Credit Exposure under any CPP-H Supplier Forward Contract between the Company and the CPP-B Supplier; provided, however, that in the event the Total Exposure Amount calculated for any day is a negative number, the Total Exposure Amount shall be deemed to be zero for such day. Any previously posted collateral will be netted against the Total Exposure Amount when determining any new collateral requirements.

#### **5.4.b Net Out of Settlement Amounts**

The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the CPP-B Supplier for the provision of CPP Supply into a single amount by: netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated

and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the CPP-B Supplier for the provision of CPP Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting party under this Agreement or any other agreement(s) between the Company and the CPP-B Supplier for the provision of CPP Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the CPP-B Supplier is the Defaulting Party and the Termination Payment is due to the CPP-B Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the CPP-B Supplier, and further provided that any previously attached security interest of the Company in such retained amounts shall continue. Any portion of the Termination Payment not retained by the Company as security shall be immediately due and owing to the CPP-B Supplier as an estimate of the amounts ultimately determined to be due and owing.

The Parties recognize, however, the final calculation of Settlement Amounts hereunder may not be known for some time since the level of such Settlement Amounts may be dependant upon the arrangements made by the Company to obtain replacement services or a replacement supplier. The Company and the CPP-B Supplier agree that, until the calculation of Settlement Amounts under this provision is completed, the amount and payment to the to the Company of the Termination Payment shall be immediately due and owing as an estimate of the amounts ultimately determined to be due and owing. After Settlement Amounts have been finally determined under this Section 5.4, the amounts due and owing will be reconciled with payments already made by the CPP-B Supplier.

The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined to be due and owing by the CPP-B Supplier, and if, upon making a final determination of Settlement Amounts, the Termination Payment, or any portion thereof, is to be made to the CPP-B Supplier, the Company will pay simple (not compounded) interest on the retained portion of the Termination Payment to the CPP-B Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per annum.

## **ARTICLE 6. CREDITWORTHINESS**

### **6.1 Applicability**

The CPP-B Supplier agrees that it shall meet the creditworthiness standards of this Article 6 at all times during the Term and shall promptly notify the Company of any change in its credit rating or the credit rating of its Guarantor, shall promptly notify the Company if the CPP-B Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and shall also notify the company of any materially adverse change in its financial condition or in the financial condition of its Guarantor. Without limitation of the foregoing, the CPP-B Supplier shall, upon written request by the Company, affirmatively demonstrate its compliance with the creditworthiness standards set forth hereunder. The Company may establish less restrictive creditworthiness standards under this Article 6 in a non-discriminatory manner. The Company shall promptly notify the CPP-B Supplier in the event the Company is downgraded Below Investment Grade.

### **6.2 Creditworthiness Determination**

The CPP-B Supplier may submit and maintain a security deposit in accordance with Sections 6.3 and 6.7 in lieu of submitting to or being qualified under a creditworthiness evaluation. The CPP-B Supplier shall have the opportunity to petition the Company to re-evaluate its creditworthiness whenever an event occurs that the CPP-B Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no later than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the Credit Limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. The CPP-B Supplier shall provide unrestricted access to audited financial statements; provided, however, that if audited financial statements are not available, the Company may accept other types of financial statements. In the event that the CPP-B Supplier relies upon a Guarantor, the creditworthiness determination provided for by this section shall apply to the Guarantor.

### **6.3 Mark-to-Market Exposure Amount Methodology**

To calculate the daily exposure for the CPP-B Supplier, the Mark-to-Market Exposure Amount methodology will be used. The "Initial Mark" for each Billing Month will be determined at the time the Auction is completed based on the available On-Peak Forward Prices and, for the remaining Billing Months for which such prices are not available, will be derived using a proprietary method that reflects forward market

conditions. At the time the Auction is completed, the Mark-to-Market Exposure Amount for the CPP-B Supplier shall be equal to zero. Subsequently, the differences between the Initial Mark and the available On-Peak Forward Prices on the valuation date ("Mark") for the corresponding Billing Months will be used to calculate the daily exposures for the CPP-B Supplier. The total Mark-to-Market Exposure Amount will be equal to 1.1 times the sum of the MTM for each Billing Month, less amounts due the CPP-B Supplier for CPP-B Supply. The methodology for calculation of the Initial Mark, Mark and MTM is described in Appendix D.

#### **6.4 Credit Limit**

The following criteria constitute the Company's creditworthiness requirements for the CPP-B Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) will be used.

(i) The following requirements shall apply in the event that the CPP-B Supplier or its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the CPP-B Supplier cannot meet the following requirements, it shall be required to post cash or a Letter of Credit for the Total Exposure Amount.

(a) If the CPP-B Supplier chooses not to rely on a Guarantor to satisfy the requirements of this Section 6.4(i), the requirements of this subsection 6.4(i)(a) shall apply. For the CPP-B Supplier to be granted an unsecured line of credit, the CPP-B Supplier: (1) must be rated by at least two of the following rating agencies: S&P, Moody's, Fitch or A.M. Best, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) of at least "BBB-" from S&P, "Baa3" from Moody's, "BBB-" from Fitch, or "bbb" from A.M. Best (a "Minimum Rating"). If the CPP-B Supplier is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the CPP-B Supplier is rated by three or four rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined in accordance with Table A:

**Table A**

<b>Credit Rating of the CPP-B Supplier or the Guarantor</b>				<b>Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below</b>	
S&P	Moody's	Fitch	A.M. Best	%	Credit Limit Cap*
A- and above	A3 and above	A- and above	Aaa	16% of TNW	\$60,000,000
BBB+	Baa1	BBB+	Aa	10% of TNW	\$40,000,000
BBB	Baa2	BBB	A	8%	\$30,000,000
BBB-	Baa3	BBB-	Bbb	6%	\$15,000,000
Below BBB-	Below Baa3	Below BBB-	Below Bbb	0% of TNW	0

\*For CPP-B Suppliers relying on a Guarantor, the Credit Limit is also capped by the amount of the financial Guaranty.

The CPP-B Supplier will be granted a single Credit Limit to be applied to all CPP Supply agreements between the CPP-B Supplier and the Company. The CPP-B Supplier will be required to post cash or a Letter of Credit for the Margin due the Company as set forth in Section 6.5.

(b) If the CPP-B Supplier chooses to rely upon a Guarantor to satisfy the requirements of this Section 6.4(i) the requirements of this subsection 6.4(i)(b) shall apply. If the CPP-B Supplier has a Guarantor, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, Fitch or A.M. Best, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the Guarantor is rated by three or four rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount that could be provided through the financial Guaranty will be determined in accordance with Table A.

The CPP-B Supplier will be granted a Credit Limit equal to the lesser of: (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the Term or (ii) the Credit Limit applicable to the Guarantor's credit rating in accordance with Table A. The CPP-B Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable Credit Limit during the time period after the Company has made a Margin Call but before the CPP-B Supplier has posted the required Margin. Notwithstanding anything herein to contrary, the CPP-B Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the CPP-B Supplier may request a return of Margin in accordance with Section 6.5. The CPP-B Supplier will be required to post cash or a Letter of Credit for the Margin due the Company as set forth in Section 6.5.

(c) As an alternative to satisfying subsections 6.4(i)(a) or 6.4(i)(b), the CPP-B Supplier may post cash or a Letter of Credit for the entire Total Exposure Amount.

(ii) The following standards shall apply in the event that neither the CPP-B Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the CPP-B Supplier cannot meet the following requirements, the posting of cash or a Letter of Credit for the Total Exposure Amount will be required at the time of or prior to the execution of this Agreement.

(a) The CPP-B Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for CPP-B Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the CPP-B Supplier, to evaluate the evidence of creditworthiness submitted by the CPP-B Supplier; or

(b) The CPP-B Supplier's Guarantor shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for Guarantors of CPP-B Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the CPP-B Supplier, to evaluate the evidence of creditworthiness submitted by such Guarantor.

(iii) If neither the CPP-B Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States, the CPP-B Supplier or its Guarantor, in addition to all documentation required elsewhere in this Section 6.5, shall supply the following as a condition of being granted a Credit Limit.

(a) For the CPP-B Supplier: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in which the CPP-B Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the CPP-B Supplier in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of the CPP-B Supplier that the person executing the Agreement on behalf of the CPP-B Supplier has the authority to execute the Agreement and that the governing board of the CPP-B Supplier has approved the execution of the Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of the CPP-B Supplier that the CPP-B Supplier has been authorized by its governing board to enter into agreements of the same type as this Agreement. The Company shall have full discretion, without liability or recourse to the CPP-B Supplier, to evaluate the sufficiency of the documents submitted by the CPP-B Supplier.

(b) For the CPP-B Supplier's Guarantor: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in the which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as this Guaranty. The Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the CPP-B Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

## **6.5 Posting Margin and Return of Surplus Margin**

(i) If at any time during the Term, the Total Exposure Amount exceeds the CPP-B Supplier's Credit Limit, then the Company, on any Business Day, may request

that the CPP-B Supplier provide Margin in the form of cash or a Letter of Credit (a "Margin Call"). The Margin requirement will be rounded up to the nearest \$100,000.

(ii) If the CPP-B Supplier receives written notice for Margin from the Company by 1:00 p.m. EPT on a Business Day, then the CPP-B Supplier shall post Margin the next following Business Day if posting cash, and the second Business Day if posting a Letter of Credit; provided, however, that the Company may agree in writing to extend the period to provide Margin. If the CPP-B Supplier receives notice for Margin from the Company after 1:00 p.m. EPT on a Business Day, then the CPP-B Supplier must post Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide Margin. The Company will not unreasonably deny a request for a one-business day extension of such period. In the event that the CPP-B Supplier fails to provide Margin when due, then an Event of Default under Article 5 will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5.

(iii) Any cash or a Letter of Credit held by the Company in excess of the required Margin ("Surplus Margin"), as determined above, will be returned to the CPP-B Supplier upon receipt of a written request by the CPP-B Supplier. If the CPP-B Supplier posted cash and notice is received by 1:00 p.m. EPT on a Business Day, the Surplus Margin will be returned by the next following Business Day. If the CPP-B Supplier posted cash and notice is received by the Company after 1:00 p.m. EPT on a Business Day, the Surplus Margin shall be returned by the second Business Day following the date of notice. If the CPP-B Supplier posted a Letter of Credit to secure its Margin requirement, the Surplus Margin shall be returned on the next Business Day following the Business Day on which the CPP-B Supplier's written request for its return is received by the Company. The Company may satisfy its obligation to return Surplus Margin included in a Letter of Credit posted by the CPP-B Supplier by signing and transmitting by telecopy to the issuing bank a New Availability Certificate (as provided for in Annex 3 to the Letter of Credit) for the new Margin amount. In the event that the Company fails to satisfy its obligation to return the Surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 will be deemed to have occurred and the CPP-B Supplier will be entitled to the remedies set forth in Article 5 unless the CPP-B Supplier agrees in writing to extend such period for returning the surplus Margin. The CPP-B Supplier will not unreasonably deny a request for a one-business day extension of the period for returning the Surplus Margin.

## **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the CPP-B Supplier delivered Margin or collateral hereunder, the CPP-B Supplier hereby grants to



the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and in all amounts owed to the CPP-B Supplier by the Company under or in connection with any CPP Supply agreement. The CPP-B Supplier agrees to take such action as reasonably required to perfect in favor of the Company a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by the CPP-B Supplier, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the CPP-B Supplier in the possession of the Company whether held in connection with this Agreement or any other agreement(s) between the Company and the CPP-B Supplier for the provision of CPP Supply; (iii) draw on any outstanding letter of credit issued for the Company's benefit; and (iv) liquidate all security held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the CPP-B Supplier, including any equity or right of purchase or redemption by the CPP-B Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the CPP-B Supplier's obligation under this Agreement or any other agreement(s) between the Company and the CPP-B Supplier for the provision of CPP Supply (the CPP-B Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to the return of any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the CPP-B Supplier:

Notification information for each CPP-B Supplier is set forth on Appendix A hereto.

If to the Company to:

Commonwealth Edison Company

One Financial Place

440 S. LaSalle Street – Suite 3300

Chicago, Illinois

Attention: Vice President – Energy Acquisition

Facsimile No.: (312) 394-3759

Confirmation No.: (312) 394-2518

Copy to:

Commonwealth Edison Company

One Financial Place

440 S. LaSalle Street – Suite 3300

Chicago, Illinois

Attention: Vice President & Deputy General Counsel

Facsimile No.: (312) 394-5433

Confirmation No.: (312) 394-7541

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

## **6.7 Security Instruments**

At the CPP-B Supplier's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

- (i) Cash; or

(ii) An irrevocable transferable standby letter of credit acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) from S&P or Moody's (a "Letter of Credit"). (A standard format for the Letter of Credit is provided in Appendix E.) The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods unless the Company receives written notice from the issuing financial institution at least ninety (90) days, but not more than one hundred twenty (120) days, prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If the Company receives notice from the issuing financial institution that the Letter of Credit will not be extended, the CPP-B Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute Letter of Credit must be effective as of the expiration date and delivered to the Company at least thirty (30) days before the expiration date of the original Letter of Credit. If the CPP-B Supplier fails to supply a substitute Letter of Credit as required herein, then the Company will have the right to draw on the existing Letter of Credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which the CPP-B Supplier has obtained a Letter of Credit falls below levels specified in this Article 6, the CPP-B Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards unless such period is extended in writing by Company.

## **6.8 Maintenance of Creditworthiness**

### **6.8.a. Reporting of Changes**

The CPP-B Supplier shall promptly notify the Company of any change in its credit rating or the credit rating of its Guarantor, shall promptly notify the Company if the CPP-B Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and shall also notify the company of any materially adverse change in its financial condition or in the financial condition of its Guarantor. The CPP-B Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company. The Company shall promptly notify the CPP-B Supplier in the event that the Company is downgraded Below Investment Grade.

### **6.8.b. Change in Credit Standing**

The Company will re-evaluate the creditworthiness of the CPP-B Supplier whenever it becomes aware, through the provision of notice by the CPP-B Supplier or otherwise, of a downgrade in the CPP-B Supplier's or Guarantor's credit rating. If the lowest credit rating (whether corporate issuer rating or unsecured senior debt rating) used to determine the CPP-B Supplier's Credit Limit is downgraded, the Company will immediately reassess the amount of the Credit Limit it will grant the CPP-B Supplier pursuant to Section 6.5, as well as the adequacy of the Margin and the collateral being provided by the CPP-B Supplier pursuant to Sections 6.6 and 6.8. If necessary, the Company will request and the CPP-B Supplier shall provide an additional Security Instrument to the Company (or increase the value of the existing Security Instrument) in accordance with Sections 6.5 and 6.7.

#### **6.9 Calling on Security**

The Company may call upon the Security Instrument posted by the CPP-B Supplier if the CPP-B Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the CPP-B Supplier for the provision of CPP Supply after all of the following events occur:

- (i) Written Notice of Default is provided to the CPP-B Supplier; and
- (ii) Any applicable cure period ends.

The foregoing notwithstanding, the Security Instrument posted by the CPP-B Supplier shall become due automatically, and may be called upon by the Company, without prior notice or right of cure in the case of any Event of Default arising under Section 5.1 (i), (ii), (iii), (iv), (v), (vi), (vii) (viii) and (ix).

#### **6.10 Interest on Cash Held by Company/Separate Account for Cash Collateral**

The Company will pay simple interest (not compounded) calculated at the lower of the Interest Index or six (6) percent per annum on all cash posted by the CPP-B Supplier and directly held by the Company pursuant to this Agreement. In the event that the Company's credit is downgraded Below Investment Grade, at the request of the CPP-B Supplier, the Company will transfer within 2 Business Days all cash collateral being held by it pursuant to this Agreement to a Qualified Institution. The Qualified Institution will hold the collateral in an interest-bearing account pending release of the funds pursuant to the terms of this Agreement. Interest will be allocated pro rata to the CPP-B Supplier.

Each Billing Month the Company will prepare a statement of interest amounts due to the CPP-B Supplier. The statement will be sent to the CPP-B Supplier within three (3) Business Days after the end of the Billing Month via overnight mail, facsimile or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

#### **6.11 Confidentiality**

Information supplied by the CPP-B Supplier in connection with the creditworthiness process shall be deemed confidential and not subject to public disclosure, unless Applicable Legal Authorities require disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The CPP-B Supplier will be given prompt notice of any request by a third party to obtain confidential information related to the CPP-B Supplier's creditworthiness.

#### **6.12 No Endorsement of CPP-B Supplier**

The Company's determination that the CPP-B Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the CPP-B Supplier. The Company will treat all CPP-B Suppliers in a non-discriminatory manner and shall provide no preference to any CPP-B Supplier.

#### **6.13 Multiple CPP Supply Agreements**

It is the intent of the Company and the CPP-B Supplier that, in the event the CPP-B Supplier is a party to other agreements with the Company for the provision of CPP Supply, the Company will calculate the Margin applicable to all such agreements as set forth herein.

### **9.1 The Company Payment of Obligations to the CPP-B Supplier**

The Company shall pay all amounts due to the CPP-B Supplier hereunder in accordance with the following provisions:

(iv) In the event that the Company's credit is downgraded Below Investment Grade, the Company will accelerate payments to the CPP-B Supplier in accordance with the following schedule:

(a) A Statement will be prepared on a bi-weekly basis;

(b) The Statement will be sent to the CPP-B Supplier within three (3) Business Days of the end each bi-weekly period;

(c) The Company shall make payment on the first Business Day after the 9<sup>th</sup> calendar day after the end of each bi-weekly period.

Alternatively, the Company and the CPP-B Supplier may mutually agree upon a schedule.

## CPP-H Supplier Forward Contract

### DEFINITIONS

Credit Exposure means the amount required as security from a CPP-H Supplier pursuant to Section 6.4.

Settlement Amount means with respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4.a. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

Total Exposure Amount means an amount calculated daily for the CPP-H Supplier reflecting the total credit exposure to the Company and consisting of the sum of: (i) the amount designated as the Credit Exposure under this Agreement and any other CPP-H Supply agreement between the Company and the CPP-H Supplier, (ii) the Mark-to-Market Exposure Amount arising under any agreement for CPP-A Supply or CPP-B Supply between the Company and the CPP-H Supplier; provided, however, that in the event the Total Exposure Amount calculated for any day is a negative number, the Total Exposure Amount shall be deemed to be zero for such day. Any previously posted collateral will be netted against the Total Exposure Amount when determining any new collateral requirements.

#### 5.4.b Net Out of Settlement Amounts

The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the CPP-H Supplier for the provision of CPP Supply into a single amount by: netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the CPP-H Supplier for the provision of CPP Supply against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting party under this Agreement or any other

agreement(s) between the Company and the CPP-H Supplier for the provision of CPP Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the CPP-H Supplier is the Defaulting Party and the Termination Payment is due to the CPP-H Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the CPP-H Supplier, and further provided that any previously attached security interest of the Company in such retained amounts shall continue. Any portion of the Termination Payment not retained by the Company as security shall be immediately due and owing to the CPP-H Supplier as an estimate of the amounts ultimately determined to be due and owing.

The Parties recognize, however, the final calculation of Settlement Amounts hereunder may not be known for some time since the level of such Settlement Amounts may be dependant upon the arrangements made by the Company to obtain replacement services or a replacement supplier. The Company and the CPP-H Supplier agree that, until the calculation of Settlement Amounts under this provision is completed, the amount and payment to the Company of the Termination Payment shall be immediately due and owing as an estimate of the amounts ultimately determined to be due and owing. After Settlement Amounts have been finally determined under this Section 5.4, the amounts due and owing will be reconciled with payments already made by the CPP-H Supplier.

The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined to be due and owing by the CPP-H Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the CPP-H Supplier, the Company will pay simple (not compounded) interest on the retained portion of the Termination Payment to the CPP-H Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per annum.

## **ARTICLE 6. CREDITWORTHINESS**

### **6.1 Applicability**

The CPP-H Supplier agrees that it shall meet the creditworthiness standards of this Article 6 at all times during the Term and shall promptly notify the Company of any change in its credit rating or the credit rating of its Guarantor, shall promptly notify the Company if the CPP-H Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and shall also notify the company of any



materially adverse change in its financial condition or in the financial condition of its Guarantor. Without limitation of the foregoing, the CPP-H Supplier shall, upon written request by the Company, affirmatively demonstrate its compliance with the creditworthiness standards set forth hereunder. The Company may establish less restrictive creditworthiness standards under this Article 6 in a non-discriminatory manner. The Company shall promptly notify the CPP-H Supplier in the event the Company is downgraded Below Investment Grade.

## **6.2 Creditworthiness Determination**

The CPP-H Supplier may submit and maintain a security deposit in accordance with Sections 6.3 and 6.7 in lieu of submitting to or being qualified under a creditworthiness evaluation. The CPP-H Supplier shall have the opportunity to petition the Company to re-evaluate its creditworthiness whenever an event occurs that the CPP-H Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no later than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the Credit Limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. The CPP-H Supplier shall provide unrestricted access to audited financial statements; provided, however, that if audited financial statements are not available, the Company may accept other types of financial statements. In the event that the CPP-H Supplier relies upon a Guarantor, the creditworthiness determination provided for by this section shall apply to the Guarantor.

## **6.3 Credit Limit**

The following criteria constitute the Company's creditworthiness requirements for the CPP-H Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) will be used.

(i) The following requirements shall apply in the event that the CPP-H Supplier or its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the CPP-H Supplier cannot meet the following requirements, it shall be required to post cash or a Letter of Credit for the Total Exposure Amount.

(a) If the CPP-H Supplier chooses not to rely on a Guarantor to satisfy the requirements of this Section 6.3(i), the requirements of this subsection 6.3(i)(a) shall apply. For the CPP-H Supplier to be granted an unsecured line of credit, the CPP-H Supplier: (1) must be rated by at least two of the following

rating agencies: S&P, Moody's, Fitch or A.M. Best, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) of at least "BBB-" from S&P, "Baa3" from Moody's, "BBB-" from Fitch, or "bbb" from A.M. Best (a "Minimum Rating"). If the CPP-H Supplier is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the CPP-H Supplier is rated by three or four rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined in accordance with Table A:

**Table A**

<b>Credit Rating of the CPP-H Supplier or the Guarantor</b>				<b>Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below</b>	
S&P	Moody's	Fitch	A.M. Best	%	Credit Limit Cap*
A- and above	A3 and above	A- and above	Aaa	16% of TNW	\$60,000,000
BBB+	Baa1	BBB+	Aa	10% of TNW	\$40,000,000
BBB	Baa2	BBB	A	8%	\$30,000,000
BBB-	Baa3	BBB-	Bbb	6%	\$15,000,000
Below BBB-	Below Baa3	Below BBB-	Below Bbb	0% of TNW	0

\*For CPP-H Suppliers relying on a Guarantor, the Credit Limit is also capped by the amount of the financial Guaranty.

The CPP-H Supplier will be granted a single Credit Limit to be applied to all CPP Supply agreements between the CPP-H Supplier and the Company. The CPP-H Supplier will be required to post cash or a Letter of Credit for the Margin due the Company as set forth in Section 6.5.

(b) If the CPP-H Supplier chooses to rely upon a Guarantor to satisfy the requirements of this Section 6.3(i) the requirements of this subsection 6.3(i)(b) shall apply. If the CPP-H Supplier has a Guarantor, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, Fitch or A.M. Best, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the lowest rating will be used. If the Guarantor is rated by three or four rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are common such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount that could be provided through the financial Guaranty will be determined in accordance with Table A.

The CPP-H Supplier will be granted a Credit Limit equal to the lesser of: (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the Term or (ii) the Credit Limit applicable to the Guarantor's credit rating in accordance with Table A. The CPP-H Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable Credit Limit during the time period after the Company has made a Margin Call but before the CPP-H Supplier has posted the required Margin. Notwithstanding anything herein to contrary, the CPP-H Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the CPP-H Supplier may request a return of Margin in accordance with Section 6.5. The CPP-H Supplier will be required to post cash or a Letter of Credit for the Margin due the Company as set forth in Section 6.5.

(c) As an alternative to satisfying subsections 6.3(i)(a) or 6.3(i)(b), the CPP-H Supplier may post cash or a Letter of Credit for the entire Total Exposure Amount.

(ii) The following standards shall apply in the event that neither the CPP-H Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States. If the CPP-H Supplier cannot meet the following requirements, the posting of cash or a Letter of Credit for the Total Exposure Amount will be required at the time of or prior to the execution of this Agreement.

(a) The CPP-H Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for CPP-H Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the CPP-H Supplier, to evaluate the evidence of creditworthiness submitted by the CPP-H Supplier; or

(b) The CPP-H Supplier's Guarantor shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above for Guarantors of CPP-H Suppliers that have been incorporated or otherwise formed under the laws of the United States; provided, however, that the Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the CPP-H Supplier, to evaluate the evidence of creditworthiness submitted by such Guarantor.

(iii) If neither the CPP-H Supplier nor its Guarantor has been incorporated or otherwise formed under the laws of the United States, the CPP-H Supplier or its Guarantor, in addition to all documentation required elsewhere in this Section 6.5, shall supply the following as a condition of being granted a Credit Limit.

(a) For the CPP-H Supplier: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in which the CPP-H Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the CPP-H Supplier in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of the CPP-H Supplier that the person executing the Agreement on behalf of the CPP-H Supplier has the authority to execute the Agreement and that the governing board of the CPP-H Supplier has approved the execution of the Agreement; and (iii) the sworn certificate of the corporate secretary (or similar officer) of the CPP-H Supplier that the CPP-H Supplier has been authorized by its governing board to enter into agreements of the same type as this Agreement. The Company shall have full discretion, without liability or recourse to the CPP-H Supplier, to evaluate the sufficiency of the documents submitted by the CPP-H Supplier.

(b) For the CPP-H Supplier's Guarantor: (i) a legal opinion of independent counsel qualified to practice in the foreign jurisdiction in the which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; (ii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and (iii) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as this Guaranty. The Company shall have sole and absolute discretion, without liability or recourse to the Guarantor or the CPP-H Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

#### **6.4 Credit Exposure**

The Credit Exposure per tranche that will be required of the CPP-H Supplier under this Agreement shall be \$70,000. The Credit Exposure under this Agreement shall be \$70,000 time the number of tranches shown in Appendix A. If a CPP-H Supplier

meets the Minimum Ratings listed above, no security will be required as long as the Total Exposure Amount does not exceed the Credit Limit of the CPP-H Supplier or its Guarantor.

## **6.5 Posting Margin and Return of Surplus Margin**

(i) If at any time during the Term, the Total Exposure Amount exceeds the CPP-H Supplier's Credit Limit, then the Company, on any Business Day, may request that the CPP-H Supplier provide Margin in the form of cash or a Letter of Credit (a "Margin Call"). The Margin requirement will be rounded up to the nearest \$100,000.

(ii) If the CPP-H Supplier receives written notice for Margin from the Company by 1:00 p.m. EPT on a Business Day, then the CPP-H Supplier shall post Margin the next following Business Day if posting cash, and the second Business Day if posting a Letter of Credit; provided, however, that the Company may agree in writing to extend the period to provide Margin. If the CPP-H Supplier receives notice for Margin from the Company after 1:00 p.m. EPT on a Business Day, then the CPP-H Supplier must post Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide Margin. The Company will not unreasonably deny a request for a one-business day extension of such period. In the event that the CPP-H Supplier fails to provide Margin when due, then an Event of Default under Article 5 will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5.

(iii) Any cash or a Letter of Credit held by the Company in excess of the required Margin ("Surplus Margin"), as determined above, will be returned to the CPP-H Supplier upon receipt of a written request by the CPP-H Supplier. If the CPP-H Supplier posted cash and notice is received by 1:00 p.m. EPT on a Business Day, the Surplus Margin will be returned by the next following Business Day. If the CPP-H Supplier posted cash and notice is received by the Company after 1:00 p.m. EPT on a Business Day, the Surplus Margin shall be returned by the second Business Day following the date of notice. If the CPP-H Supplier posted a Letter of Credit to secure its Margin requirement, the Surplus Margin shall be returned on the next Business Day following the Business Day on which the CPP-H Supplier's written request for its return is received by the Company. The Company may satisfy its obligation to return Surplus Margin included in a Letter of Credit posted by the CPP-H Supplier by signing and transmitting by telecopy to the issuing bank a New Availability Certificate (as provided for in Annex 3 to the Letter of Credit) for the new Margin amount. In the event that the Company fails to satisfy its obligation to return the Surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 will be deemed to have occurred and the CPP-H Supplier will be entitled to the remedies set forth in Article 5 unless the CPP-H

Supplier agrees in writing to extend such period for returning the surplus Margin. The CPP-H Supplier will not unreasonably deny a request for a one-business day extension of the period for returning the Surplus Margin.

## **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the CPP-H Supplier delivered Margin or collateral hereunder, the CPP-H Supplier hereby grants to the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and in all amounts owed to the CPP-H Supplier by the Company under or in connection with any CPP Supply agreement. The CPP-H Supplier agrees to take such action as reasonably required to perfect in favor of the Company a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by the CPP-H Supplier, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the CPP-H Supplier in the possession of the Company whether held in connection with this Agreement or any other agreement(s) between the Company and the CPP-H Supplier for the provision of CPP Supply; (iii) draw on any outstanding letter of credit issued for the Company's benefit; and (iv) liquidate all security held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the CPP-H Supplier, including any equity or right of purchase or redemption by the CPP-H Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the CPP-H Supplier's obligation under this Agreement or any other agreement(s) between the Company and the CPP-H Supplier for the provision of CPP Supply (the CPP-H Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to the return of any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the CPP-H Supplier:

Notification information for each CPP-H Supplier is set forth on Appendix A hereto.

If to the Company to:

Commonwealth Edison Company  
One Financial Place  
440 S. LaSalle Street – Suite 3300  
Chicago, Illinois  
Attention: Vice President – Energy Acquisition  
Facsimile No.: (312) 394-3759  
Confirmation No.: (312) 394-2518

Copy to:

Commonwealth Edison Company  
One Financial Place  
440 S. LaSalle Street – Suite 3300  
Chicago, Illinois  
Attention: Vice President & Deputy General Counsel  
Facsimile No.: (312) 394-5433  
Confirmation No.: (312) 394-7541

or to such other person at such other address as a Party shall designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided, however, that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.



## **6.7 Security Instruments**

At the CPP-H Supplier's choice, the following are deemed to be acceptable methods for posting security (each, a "Security Instrument"), if required:

(i) Cash; or

(ii) An irrevocable transferable standby letter of credit acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted by one notch) from S&P or Moody's (a "Letter of Credit"). (A standard format for the Letter of Credit is provided in Appendix E.) The Letter of Credit shall state that it shall renew automatically for successive one-year or shorter periods unless the Company receives written notice from the issuing financial institution at least ninety (90) days, but not more than one hundred twenty days, prior to the expiration date stated in the Letter of Credit that the issuing financial institution elects not to extend the Letter of Credit. If the Company receives notice from the issuing financial institution that the Letter of Credit will not be extended, the CPP-H Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute Letter of Credit must be effective as of the expiration date and delivered to the Company at least thirty (30) days before the expiration date of the original Letter of Credit. If the CPP-H Supplier fails to supply a substitute Letter of Credit as required herein, then the Company will have the right to draw on the existing Letter of Credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which the CPP-H Supplier has obtained a Letter of Credit falls below levels specified in this Article 6, the CPP-H Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards unless such period is extended in writing by Company.

## **6.8 Maintenance of Creditworthiness**

### **6.8.a. Reporting of Changes**

The CPP-H Supplier shall promptly notify the Company of any change in its credit rating or the credit rating of its Guarantor, shall promptly notify the Company if the CPP-H Supplier or its Guarantor is placed on a credit watch with negative implications by any rating agency, and shall also notify the company of any materially adverse change in its financial condition or in the financial condition of its Guarantor. The CPP-H

Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company. The Company shall promptly notify the CPP-H Supplier in the event the Company is downgraded Below Investment Grade.

#### **6.8.b. Change in Credit Standing**

The Company will re-evaluate the creditworthiness of the CPP-H Supplier whenever it becomes aware, through the provision of notice by the CPP-H Supplier or otherwise, of a downgrade in the CPP-H Supplier's or Guarantor's credit rating. If the lowest credit rating (whether corporate issuer rating or unsecured senior debt rating) used to determine the CPP-H Supplier's Credit Limit is downgraded, the Company will immediately reassess the amount of the Credit Limit it will grant the CPP-B Supplier pursuant to Section 6.3, as well as the adequacy of the Margin and the collateral being provided by the CPP-B Supplier pursuant to Sections 6.5 and 6.7. If necessary, the Company will request and the CPP-H Supplier shall provide an additional Security Instrument to the Company (or increase the value of the existing Security Instrument) in accordance with Section 6.5 and 6.7.

#### **6.9 Calling on Security**

The Company may call upon the Security Instrument posted by the CPP-H Supplier if the CPP-H Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the CPP-H Supplier for the provision of CPP Supply after all of the following events occur:

- (i) Written Notice of Default is provided to the CPP-H Supplier; and
- (ii) Any applicable cure period ends.

The foregoing notwithstanding, the Security Instrument posted by the CPP-H Supplier shall become due automatically, and may be called upon by the Company, without prior notice or right of cure in the case of any Event of Default arising under Section 5.1 (i), (ii), (iii), (iv), (v), (vi), (vii) (viii) and (ix).

#### **6.10 Interest on Cash Held by Company/Separate Account for Cash Collateral**

The Company will pay simple interest (not compounded) calculated at the lower of the Interest Index or six (6) percent per annum on all cash posted by the CPP-H Supplier and directly held by the Company pursuant to this Agreement. In the event that the Company's credit is downgraded Below Investment Grade, at the request of the CPP-H Supplier, the Company will transfer within 2 Business Days all cash collateral being held by it pursuant to this Agreement to a Qualified Institution. The Qualified Institution will hold the collateral in an interest-bearing account pending release of the

funds pursuant to the terms of this Agreement. Interest will be allocated pro rata to the CPP-H Supplier.

Each Billing Month the Company will prepare a statement of interest amounts due to the CPP-H Supplier. The statement will be sent to the CPP-H Supplier within three (3) Business Days after the end of the Billing Month via overnight mail, facsimile or other expeditious means. The Company shall make interest payments on the first Business Day after the 5<sup>th</sup> day of each calendar month.

#### **6.11 Confidentiality**

Information supplied by the CPP-H Supplier in connection with the creditworthiness process shall be deemed confidential and not subject to public disclosure, unless Applicable Legal Authorities require disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The CPP-H Supplier will be given prompt notice of any request by a third party to obtain confidential information related to the CPP-H Supplier's creditworthiness.

#### **6.12 No Endorsement of CPP-H Supplier**

The Company's determination that the CPP-H Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the CPP-H Supplier. The Company will treat all CPP-H Suppliers in a non-discriminatory manner and shall provide no preference to any CPP-H Supplier.

#### **6.13 Multiple CPP Supply Agreements**

It is the intent of the Company and the CPP-H Supplier that, in the event the CPP-H Supplier is a party to other agreements with the Company for the provision of CPP Supply, the Company will calculate the Margin applicable to all such agreements as set forth herein.

#### **9.1 The Company Payment of Obligations to the CPP-H Supplier**

The Company shall pay all amounts due to the CPP-H Supplier hereunder in accordance with the following provisions:

(iv) In the event that the Company's credit is downgraded Below Investment Grade, the Company will accelerate payments to the CPP-H Supplier in accordance with the following schedule:

- (a) A Statement will be prepared on a bi-weekly basis;
- (b) The Statement will be sent to the CPP-H Supplier within three (3) Business Days of the end each bi-weekly period;
- (c) The Company shall make payment on the first Business Day after the 9<sup>th</sup> calendar day after the end of each bi-weekly period.

Alternatively, the Company and the CPP-H Supplier may mutually agree upon a schedule.